

## DEMARCUS A. GRESHAM,

V.

Respondent.

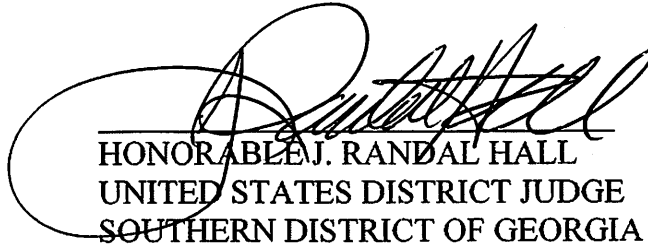
CV 116-044

Demarcus A. Gresham, currently incarcerated at the Valdosta State Prison in Valdosta, Georgia, initially filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of Georgia. (Doc. no. 1.) On April 15, 2016, U.S. Magistrate Judge Alan J. Baverman transferred the case to this District because Petitioner appeared to be challenging his conviction in the Superior Court of Wilkes County. (Doc. no. 2.) Upon review of the filing, the Magistrate Judge determined it was unclear whether Petitioner was seeking relief pursuant to 28 U.S.C. § 2254 or was instead pursuing a 42 U.S.C. § 1983 action, and directed Petitioner to re-file his complaint as either a petition under § 2254 or a civil rights complaint pursuant to § 1983. (Doc. no. 7.) Because Petitioner failed to comply, the Magistrate Judge issued a Report and Recommendation (“R&R”) in which he recommended that Petitioner’s case be dismissed based on his failure to prosecute. (Doc. no. 8.) Petitioner was also instructed that any objections to the R&R had to be filed no later than July 15, 2016. (Doc. no. 9.) As no objections to the R&R were received by the

deadline, the Court adopted the R&R on July 21, 2016. (Doc. no. 10.)

On July 25, 2016, the Clerk's Office received and filed Petitioner's § 2254 petition. (Doc. no. 12.) Although Petitioner did not provide the date he executed the petition, attachments to his petition seem to indicate he mailed it in early July 2016. (See id. at 16.) The Court **VACATES** its July 21st Order and **DIRECTS** the **CLERK** to reopen the civil action.<sup>1</sup>

SO ORDERED this 10<sup>th</sup> day of August, 2016, at Augusta, Georgia.



HONORABLE J. RANDAL HALL  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF GEORGIA

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<sup>1</sup> Because Petitioner has now elected to proceed with a 28 U.S.C. § 2254 petition, the Court **DIRECTS** the **CLERK** to update the docket to delineate the parties as Petitioner and Respondent.